



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,041	02/04/2004	Andrew J. Boron	716139.169	2040

27128 7590 01/24/2006

BLACKWELL SANDERS PEPER MARTIN LLP  
720 OLIVE STREET  
SUITE 2400  
ST. LOUIS, MO 63101

EXAMINER

GREEN, BRIAN

ART UNIT PAPER NUMBER

3611

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/708,041

Applicant(s)

BORON ET AL.

Examiner

Brian K. Green

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-16, 19-22 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16, 19-22 and 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the web structure “circumscribing” the entire perimeter of the top and opposed side portions of the panels as defined in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to state that the web structure is removably attachable and that the web structure circumscribes the entire perimeter of the top and opposed side portions of the panels as defined in amended claim 1.

***Claim Rejections - 35 USC § 112***

Claims 1-5,7-16, and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Stating in claim 1 that the web structure is removably attached is considered to be new matter. The original specification fails to disclose that the web structure is removably attached.

Claims 1-5,7-16, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 6-7 are indefinite since the web structure does not “circumscribe” the entire perimeter of the top and opposed side portions of the panels.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,7-11,13-16,20-22,25-27, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Green (U.S. Patent No. 3,256,628).

Green shows in figures 6-10 an advertising display unit comprising a pair of generally opposed panels (26,26), a web structure (34,38,40), and an attachment structure (60,62,64,66,68) for securing the display unit to the guard structure (52,70). The advertising display unit is capable of being attached to a rigid guard structure. Each of the panels (26,26) includes a top, bottom and opposed side portions. The web structure is considered to be removably attachable to the gas pump housing. The web structure of Green extends along the entire perimeter of the top and opposed side portions of the panels in a similar manner as the applicant's invention. Therefore the web structure of Green is considered to "circumscribe" the perimeter as defined by the applicant in claim 1, as best understood. In regard to claim 2, Green shows in figures 8 and 9 a tie member (68). In regard to claims 3-5, Green shows in figures 6-9 that a portion of each panel is located between a portion of the tie member and the structure, a portion of the tie member is exposed exterior of the sign structure, and the attachment structure includes a plurality of spaced openings (50,53,54,56,60,62,64,66). In regard to claims 7-9,23, and 24, Green shows in figures 6-9 that the attachment structure includes a plurality of spaced openings

Art Unit: 3611

(50,53,54,56,60,62,64,66) and that the holes are spaced vertically in the position shown in figures 6 and 7, i.e. the row of holes (50,53,54,56) are spaced vertically from the holes (60,62,64,66). In regard to claim 10, the web structure would help to resist bending. In regard to claim 11, Green shows a web panel (38). In regard to claims 13 and 14, as broadly defined, either the flaps (38,40, on the right hand side of the sign structure as shown in figure 8) or one of the flaps (38 or 40 on the right hand side of the sign structure as shown in figure 8) is considered to be the spacer. As broadly defined, the opposed side portions are considered to be portions of the panels spaced slightly inwardly from the side edges of the panels so this means that the flaps/spacer of Green are spaced from the opposed side portions. In regard to claims 15 and 16, Green shows a web forming flange (40) and a first web panel (38). In regard to claim 17, Green shows that the web structure closes the top portion with a web portion (34). In regard to claim 18, Green shows that the web structure (38,40 on each side) closes opposite sides of the sign portion. In regard to claim 22, Green shows that the web structure includes a top web portion (34) and a plurality of second web panels (38,40 on each side) adjacent the side portions. In regard to claim 25, Green shows a tie member (68). In regard to claim 26, as broadly defined, the cable (68) is considered to be a "cable strap". In regard to claim 27, as broadly defined, the indicia directly placed on the panels is considered to be the means for displaying indicia. In regard to claim 30, as broadly defined, either the flaps (38,40, on the right hand side of the sign structure as shown in figure 8) or one of the flaps (38 or 40 on the right hand side of the sign structure as shown in figure 8) is considered to be the spacer. As broadly defined, the opposed side portions are considered to be portions of the panels spaced slightly inwardly from the side

Art Unit: 3611

edges of the panels so this means that the flaps/spacer of Green are spaced from the opposed side portions.

Claims 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Copeland (U.S. Patent No. 6,164,005).

Copeland shows in figures 1-5 an advertising display unit comprising a pair of generally opposed panels (the front ply of wall 12 and the back ply of wall 12), a web structure (the side portions which connect the front ply to the back ply), a plurality of openings (32) in the opposed panels, and a plurality of tie members (14) which secure the opposed panels to the two upright supports (24,24) of the barrier. All of the sections of the display can be secured together with the tie members (14).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Snyder, Jr. (U.S. Patent No. 3,479,760).

Green discloses the applicant's basic inventive concept for providing vertically spaced openings when the display unit is attached to the guard structure. Snyder, Jr. shows in figures 1 and 3 the idea of providing vertically spaced openings (the upper openings 30 and the lower

Art Unit: 3611

openings 30) into panels in order to allow ties to be used to secure the panels to a post. In view of the teachings of Snyder, Jr. it would have been obvious to one in the art to modify Green by providing additional openings which are vertically spaced from the first openings since this would allow the panels to be attached to the support in a more secure manner.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Feldwhere (U.S. Patent No. 5,606,815).

Green discloses the applicant's basic inventive concept for attaching the web panel to the display panel with slots and ears. Green shows in figure 6 and 8 that a web panel (38) is attached to the display panel (26,40) with snap fasteners (46,48). Feldwhere shows in figures 1-3 the idea of attaching one panel to another panel with slots (26) and ears (42). In view of the teachings of Feldwhere it would have been obvious to one in the art to modify Green by attaching the web panel and display panel together with ears and slots since this would allow the display unit to be made in an easier and less expensive manner.

Claims 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Sarkisian et al. (U.S. Patent No. 4,138,787).

Green discloses the applicant's basic inventive concept for providing a holding structure/displaying means on at least one of the panels. Sarkisian et al. shows in figure 1 the idea of placing holding structure/displaying means (14,15) onto a display panel. In view of the teachings of Sarkisian et al. it would have been obvious to one in the art to modify Green by



Art Unit: 3611

placing a holding structure/displaying means onto the display since this would allow the message on the display panel to be changed in an easier and faster manner.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Caveney et al. (U.S. Patent No. 5,402,592).

Green discloses the applicant's basic inventive concept for whether the wire fastener (68) is a "cable strap". Caveney shows in figures 1 and 4 a cable strap (30) which is used to secure a panel to a support. In view of the teachings of Caveney et al. it would have been obvious to one in the art to modify Green by using a cable strap instead of a wire strap since this would allow the display unit to be attached to the support in an easier and more secure manner.

### ***Response to Arguments***

Applicant's arguments filed October 26, 2005 have been fully considered but they are not persuasive.

The applicant argues that the Green patent is not for attachment to a rigid guard structure as required in claim 1. The examiner disagrees since the applicant defines in claim 1 that the display unit is "for" attachment to a rigid guard structure. The display unit of Green is "capable" of performing the function of being attached to a rigid guard structure.

The applicant argues that the web structure of Green is not removably attached to the panels. The examiner disagrees since claim 1 does not require that the web structure be removably attached to the panels. Claim 1 merely requires that the web structure be removably attached. As broadly defined, the web structure of Green is removably attached to the gas pump.

The applicant argues that the Green patent fails to show vertically spaced holes when the display unit is attached to the guard structure. The examiner disagrees since Green shows in figures 6 and 7 shows that as the display unit is being attached to the support structure it includes vertically spaced holes and the holes are “capable” of receiving separate ties.

The applicant argues that the flaps 38 and 40 of the Green patent are not spaced from the side portions of the panels are required in claim 13. The examiner disagrees since the opposed side portions are considered to be portions of the panels spaced slightly inwardly from the side edges of the panels so this means that the flaps/spacer of Green are spaced from the opposed side portions.

The applicant argues that the Green patent is not attached to a rigid guard structure as required in claim 20. The examiner disagrees since the applicant defines in claim 20 that the display unit is “for” attachment to a rigid guard structure. The display unit of Green is “capable” of performing the function of being attached to a rigid guard structure.

The applicant argues that the Green patent is not attached to a rigid guard structure as required in claims 28 and 29. The examiner has withdrawn the rejection of claims 28 and 29 with regard to the Green patent based upon the applicant’s amendment and has applied a new rejection with regard to these claims.

The applicant argues that the Green patent fails to include a spacer as defined in claim 30. The examiner disagrees since either the flaps (38,40, on the right hand side of the sign structure as shown in figure 8) or one of the flaps (38 or 40 on the right hand side of the sign structure as shown in figure 8) is considered to be the spacer. As broadly defined, the opposed side portions

Art Unit: 3611

are considered to be portions of the panels spaced slightly inwardly from the side edges of the panels so this means that the flaps/spacer of Green are spaced from the opposed side portions.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Venegas, Jr. teaches the use of a barrier cover.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

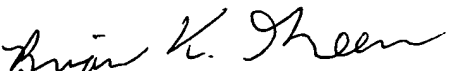
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3611

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BRIAN K. GREEN  
PRIMARY EXAMINER

Bkg  
Jan. 17, 2006